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FRANK'S FATE WITH SUPREME COURT  
JUDGES

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**FELDER**

**HIT**

# **BY ROSSER IN FINAL PLEA**

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A third time within less than four months the fate of Leo M. Frank hangs in the balance. Arguments in the appeal for a new trial were concluded Tuesday before the Supreme Court by an eloquent and scathing address by Luther Z. Rosser, chief of counsel for the convicted man. When adjournment was taken at 1 o'clock by Justices Atkinson, Evans and Hill the case was in their hands for consideration.

Frank and his friends first awaited the outcome of the charges of murder against him on August 25 after Judge Roan had charged the twelve jurors in the case.

A decision was longer in coming after the arguments for a new trial had been presented before Judge Roan in the week between October 22 and 29. His unfavorable ruling October 31 put the case up to the Supreme Court.

### **Virtually Last Stand.**

The fight which was concluded Tuesday is regarded as virtually the last stand of the defense, as the seal of the Supreme Court's unanimous approval on the verdict of the jury and the subsequent decision of Judge Roan will make it most difficult to obtain anything beyond a temporary respite from the Federal courts or the Governor of the State.

Tuesday was occupied in the conclusion of Solicitor Dorsey's argument and by arguments by Attorney Rosser and Attorney General Felder. Rosser attacked savagely the attitude of the Attorney General and the Solicitor in their persistence in the admissibility of all the evidence that went before the jury that convicted Frank and in their contention that nothing improper was done by the State in obtaining evidence.

Frank's lawyers charged that the entire bulk of the testimony hearing on Frank's alleged immorality and perversion was introduced for the sole purpose of obtaining Frank's conviction on the charge of murder and not because it had any actual relevancy to the crime of which Frank was accused.

"That jury may have thought they were writing 'guilty of murder,' your honors," he said, "but what they wrote in reality was guilty of perversion, guilty of immorality, guilty of the thousand and one suspicions that the Solicitor directed against the defendant.'"

"As soon as all that filth was allowed to come from the lying lips of Conley and Dalton, the jury, of course, said right away that

if he was guilty of these terrible things, he must be guilty of murder, and so they rendered their verdict.”

### **Attacks Felder's Argument.**

Attacking Attorney General Felder’s support of the Solicitor’s argument that Mrs. Frank’s failure to visit her husband at the jail was an indication of her consciousness of his guilt, Rosser said:

“The Attorney General ventures the assertion that this was entirely proper and legal argument. I suspect that no Attorney General ever made such a statement before in the court of last resort.”

“Let us see if it is proper. The Solicitor by his argument virtually makes the wife take the stand and testify as to her consciousness of her husband’s guilt or innocence. Now, we are proscribed by the law from placing her on the stand. If we could place her on the stand, she would not be permitted to tell whether she regarded her husband as guilty or innocent; that would be a mere conclusion.”

“Yet the Solicitor by his argument virtually places her on the stand and makes her say: ‘I have a consciousness that my husband is guilty of the murder of Mary Phagan.’”

“And the Attorney General of the State comes here and says that it is

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**PDF PAGE 3, COLUMN 1**

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# **SUPREME COURT SETS TO UNRAVELING RED THREAD OF TRUTH IN FRANK CASE**

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**By JAMES B. NEVIN.**

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Impartial observers, people with minds unprejudiced and free of bias, must have sighed a weight of sincere relief from their souls when, at last, the arguments closed in the Supreme Court hearing of the Frank case, and that famous cause had been given finally into the keeping of Georgia's highest court of review.

The public generally will incline to think that little if anything of further light was thrown upon the case by either side to the controversy, so far as the oratorical efforts pro and con were concerned in the Supreme Court. And, after all is said and done, the court will proceed to its findings upon the written records in the case, and not otherwise—and so, if there was nothing much gained by the superabundance of eloquence released before the high court, there likely wasn't much lost. And there you are!

It is the opinion of one observer, at least that neither side to the Frank hearing exactly festooned itself with glory in the matter

of the Supreme Court arguments. Its Rulings the Law. Those people, of high or humble

### **Its Rulings the Law.**

Those people, of high or humble estate, who love their country, who keep their patriotism pure and undefiled, who please to linger lovingly over such phrases as “the majesty of the law” and all that sort of thing, see in the Supreme Court of this Commonwealth the majesty of the law in its ultimate dignity!

Whatever that court says, that then Is the law of the land!

Its decrees and judgments are beyond dispute—it speaks from out the most appalling chaos the ineffable and isolated word of truth and right necessary to its own again absolute and impartial justice.

“Far from the madding crowd’s ignoble strife” sits the Supreme Court, serene and unafraid!”

The Frank case, in the hands of the most august tribunal within the State, is utterly impersonal. Whatever may have been the passion and the pride of opinion characterizing the attorneys and their methods, their utterance and their movements, in the hearing before the trial court below, they appeared small and inconsequential things, indeed, to lug into presence of the Supreme Court!

### **Squabbles Out of Place There.**

Somehow sadly out of place seemed the squabbles and the vehement charges lodged this way and that in the trial court, when one sat there in the trial court, when one sat there in the presence of the final court of review and thought upon the tremendous significance of the matters then under consideration, and what they mean eventually to every citizen of the Commonwealth—for upon the findings of the Supreme Court In the Frank case depends, perhaps, far more than some easy-going and loose-thinking citizens may imagine.

It was not surprising, therefore, that at one point in the hearings Mr. Justice Evans expressed a measure of the court's coldness toward outbursts of feeling in the Supreme Court, and rather sharply reminded the attorneys engaged that the court they then were dealing with and addressing directly cared for none of that!

The sheet anchor of the Ship of State is the law—the Impersonal and unimpassioned law. That, and nothing more nor less! And it is the mighty province of the Supreme Court at is—and equally what is NOT—the law!

If Leo Frank was tried according to law, the Supreme Court of Georgia will say as much—and that will end the matter. If he was not tried according to law, the Supreme Court will say as much—and Frank will be tried again.

### **Honor of State Involved.**

A man's life, a man's liberty, and a man's dearest honor are involved in the decision of the Supreme Court—yes! But over and beyond that, as far above it as the stars are far above the sea, the dearest honor of the sovereign State of Georgia – Georgia that boasts a proud ancestry among the original thirteen States—is involved.

It is that sacred honor of Georgia, the guarding of which has been placed in the hands of the Supreme Court!

The sovereign—Georgia—can do no wrong. Nobler and braver than that, Georgia WILL do no wrong! She will do in the Frank case as her accredited ministers direct—as the Supreme Court shall say.

And in directing a course of conduct for Georgia, that course must be right, though the heavens fall. It must be remembered that the Supreme Court of Georgia is not serving Leo Frank in this matter, save in so far as he is the hub about which mighty principles of law temporarily revolve—it is the people of Georgia the court is serving!

Franks may come and Franks may go. but the supremacy of the law abides forever!

At last, “the tumult and the shouting dies; the captains and the kings depart.” Into the austere keeping of the highest court in the State the last word of argument in the Frank case has been confided.

### **Weighted With Dignity.**

Much of that which has gone before now seems utterly confusing and vague.

Where are the storms and ragings of yesterday? The winds have blown them all away.

Sitting in the presence chamber of the Supreme Court, over in the grim and grimy old Capitol, callous indeed must have been the spectator who failed to feel heavily the full significance of the proceedings.

When the honorable Court filed it in the morning there was no need to admonish those present that it was their part to stand there while the Court seated itself. Somehow, one instinctively rose to his seat and remained silent as the Court settled itself to work. The law does not design to be spectacular—it is full of purpose to be dignified in the extreme, however.

Less and less attorneys incline nowadays to proceed to Supremo Court hearings by way of verbal pleadings. More and more they incline to appear by brief and written arguments alone.

Those few who heard the oral pleadings in the Frank case probably all agree now that the written method is the better—certainly it appears more in keeping with the spirit and intent of the high Court’s functions.

For one thing, human beings are more careful in what they write than in what they say. The written word stands a permanent witness that in the afterwhile may arise to confound or affright the writer if he fails to consider carefully the things he writes. The



spoken word, reckless of consequence and mindful of later confusion and possible indefiniteness of meaning, lend itself inevitably to error and miscarriage of justice.

### **Looks to Records for Truth.**

And so, in considering this famous miscarriage of justice in the final word the Supreme Court speaks.

One recalls again and again admonition of Mr. Justice Evans—the warning word that, after all, the Supreme Court will look to the WRITTEN RECORD for the truth of the Frank case's history and may forget entirely the passionate vehemence of attorneys in partisan argument.

And so, in considering this famous Frank case in its final analysis, those who wish to see it ended—and their name is legion—will do well to remember that the Supreme Court is not going to put Dorsey's construction upon the evidence, nor yet Rosser's, nor Felder's, nor Arnold's. The Court will make up its own mind in its own way.

Dorsey may shout and Rosser may imagine vain things—the one may say thus and so proves this and that, and the other may beat himself to willing fragments contending that thus and so mean nothing of the kind. The Supreme Court still will decide for itself.

From out the warp and woof of this curiously and amazingly complex weave of the Frank case, the Supreme Court will unravel the red thread of truth that surely **MUST** be somewhere tangled therein.

You, reader, believe thus and so to be the truth of the Frank case, and in that conclusion, you do violence to your well-meaning neighbor who differs radically with you.

It all depends upon which lawyer you heretofore have pinned your firmest faith to.

### **Flower of Georgia Bar.**

But consider—how much of the evidence did you hear, and in what order of its bearing upon the case in hand? How much do you, of your own knowledge, KNOW of the Frank case? And are your conclusions rationally sequenced, and do they fit into one another as they should, the very great gravity of the matter being well kept in mind?

In seeking poise and patience to await the decision of the Supreme Court, it perhaps is well enough to hold fast to the thought that the Supreme Court of Georgia is composed of the very flower of the Georgia bar, that it commands the respect of all classes of citizens more surely and more securely than any other civic tribunal does or may—and that it can have no higher ambition than to expound the law of the land as it really and truly is!

Leo Frank is making virtually his last stand. He is making it bravely, too – that must be ungrudgingly admitted! He is fighting with his back to the wall, sore pressed and with all promising avenues of retreat shut off. The record may soon be closed, the clasp snapped tight and locked eternally. Bear these grim and thought-arresting things in mind—and be fair!

So far, the day has gone altogether in the State's favor, but that is no sure sign the State has won the battle finally. Gallantly enough the State's generals have pressed their advantages—and with stubborn courage, that well might in weaker hearts have engendered despair, have the defendant's generals fought back!

The sun is sinking in the West—the morrow must dawn bright and rainbowed with renewed promise to Frank, or the sinking sun must go down for him in darkness the last time and not to rise again.

The matter of Leo Frank vs. the State of Georgia, murder, is out of the hands of the lawyers—it is in the bosom of the Supreme Court, and this Commonwealth will believe that all is well!